

§ 519.16 Applicability.

(a) These provisions apply only to those Department of the Army rules or portions thereof that:

- (1) Are promulgated after September 7, 2004;
- (2) Must be published in the FEDERAL REGISTER in accordance with § 519.9;
- (3) Have a substantial and direct impact on the public or any significant portion of the public; and
- (4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions thereof that:

- (1) Do not come within the purview of paragraph (a) of this section;
- (2) Involve any matter relating to a military or foreign affairs function of the United States that has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;
- (3) Involve any matter relating to Department of the Army management, personnel, or public contracts, e.g., Armed Services Procurement Regulation, including nonappropriated fund contracts;
- (4) Constitute interpretative rules, general statements of policy or rules of organization, procedure or practice; or
- (5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment. See also § 519.22.

§ 519.17 Procedures when proposing rules.

(a) A description of the proposed rule will be forwarded to RMDA (AHRC-PDD-RP) for regulatory and OMB review. The RMDA will provide a Regulation Identifier Number (RIN) used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rules section of

the FEDERAL REGISTER. Proposed rules that have unresolved issues will not be published in the FEDERAL REGISTER.

(b) The preamble and the proposed rule will be prepared by the proponent. Preparation of the preamble and the proposed rule will be in accordance with guidance contained in the FEDERAL REGISTER Handbook on Document Drafting.

(c) Public comment will be invited within a designated time, not less than 60 days, prior to the intended adoption of the proposed rule.

(d) Rulemaking proponents will submit the original and three copies of the proposed rule and the preamble in the prescribed format to RMDA (AHRC-PDD-RP). The RMDA will ensure that the approved rules comply with executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the RMDA will certify and submit the documents to the Office of the Federal Register for publication as a proposed, interim, or final rule, as applicable.

(e) If no action has occurred within 1 year of publication, the proposed rule will be considered for withdrawal, unless the proponent provides justification to RMDA (AHRC-PDD-RP). If the proponent determines that the proposed rule must be withdrawn, the proponent will submit a document to RMDA (AHRC-PDD-RP) to be published in the FEDERAL REGISTER withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

(f) Civil Works projects under the ASA (CW) will submit updated and proposed Unified Agenda items to AASA.

§ 519.18 OMB Control Number.

Each rule OMB reviews under the Paperwork Reduction Act is assigned an OMB control number which becomes its identifier throughout its life.

§ 519.19 Consideration of public comment.

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written

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data, views and arguments to the proponent of the proposed rulemaking concerned.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public comment. Informal consultation by telephone or otherwise can also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by him/her. A hearing file will be established for each hearing. The hearing file will include:

- (1) Public notices issued;
- (2) Request for the hearing;
- (3) Data or material submitted in justification thereof;
- (4) Materials submitted in opposition to the proposed action;
- (5) Hearing transcript; and
- (6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, can do so as a matter within his/her discretion.

§519.20 Procedures when publishing adopted rules.

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule as necessary in light of the comments received.

(b) If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

(c) The proponent will prepare a preamble for publication with the final rule. The proponent will discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance contained in the FEDERAL REGISTER Handbook on Document Drafting.

(d) The original and three copies of the preamble and revised rule will be forwarded to RMDA (AHRC-PDD-RP) in the proper format. The RMDA will then prepare the required certification and submit the documents to the Office of the Federal Register for publication in the form of an adopted rule.

(e) The proponent will provide to RMDA (AHRC-PDD-RP), a copy of the final rule, a completed OMB Form "Submission of Federal Rules Under the Congressional Review Act" (available at <http://www.whitehouse.gov/WH/EOP/OMB> and <http://www.gao.gov>), and a concise statement about the rule within 14 days of publication date in the FEDERAL REGISTER. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The RMDA will submit a copy of all final rules to both Houses of Congress and the Government Accounting Office (GAO) per CRA.

(f) Army Civil Works rulemaking proponents, when proposing rules governed by §519.3(e) of this regulation, may forward the documents prescribed in paragraphs (d) and (e) of this section directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with paragraph (e) of this section.

§519.21 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this part applies or would apply if issued, as specified in §519.16. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons